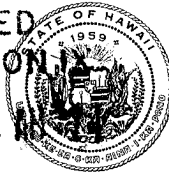


ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
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CABLE ADDRESS:
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GEORGE PAI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
4TH FLOOR
HONOLULU, HAWAII 96813

March 24, 1974

Mr. Paul De Falco
Regional Administrator
Region IX
United States Environmental
Protection Agency
100 California Street
San Francisco, California 94111


ATTN: Mr. Richard L. O'Connell
Director, Enforcement Division

Dear Mr. De Falco:

Transmitted herewith, pursuant to Section 402(b) of the 1972 Amendments to the Federal Water Pollution Control Act, is the State of Hawaii Attorney General's Statement that the laws of the State of Hawaii provide adequate authority to carry out Section 402, FWPCA, as amended, 1972 permit program.

If you have any questions or if my office may be of further assistance, please do not hesitate to call or write.

Very truly yours,


JAMES A. KAWACHIKA
Deputy Attorney General

Encl.

ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.), that in my opinion the laws of the State of Hawaii provide adequate authority to carry out the program set forth in the Consolidated Environmental Quality Program Plan submitted by the Department of Health, State of Hawaii. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

1. Authority to Issue Permits.

a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq. (hereinafter "the FWPCA" or "the Act").

State Statutory or Regulatory Authority:

§§ 342-3, 342-6, 342-7 and 342-33, Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 3, 4, 15, Public Health Regulations, Chapter 37.

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells.

State Statutory and Regulatory Authority:

§§ 342-31(6), 342-33, Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 3, 4, 15, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

Act 118 (1973) more specifically defines "State waters" as including ground waters. Pollution of State waters is prohibited.

2. Authority to Apply Federal Standards and Requirements.

a. Effluent standards and limitations and water quality standards.

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA, including:

- (1) Effluent limitations pursuant to Section 301;
- (2) Water quality related effluent limitations pursuant to Section 302;
- (3) National standards of performance pursuant to Section 306;
- (4) Toxic and pretreatment effluent standards pursuant to Section 307; and
- (5) Ocean discharge criteria pursuant to Section 403.

State Statutory and Regulatory Authority:

§§ 342-6, 342-32(1), 342-33, Hawaii Revised Statutes, as amended by Act 118 (1973).

Chapter 37-A, Public Health Regulations.

Remarks of the Attorney General:

The Director of Health may establish standards of performance by rules or regulations and may also issue permits conditioned upon compliance therewith.

b. Effluent limitations requirements of Sections 301 and 307.

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, State law

provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purposes of these sections of the FWPCA. Such limitations may be based upon an assessment of technology and processes as required under the FWPCA with respect to individual point sources, and include authority to apply:

- (1) To existing point sources, other than publicly-owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;
- (2) To publicly-owned treatment works, effluent limitations based upon the application of secondary treatment or the best practicable waste treatment technology; and
- (3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly-owned treatment works.

State Statutory and Regulatory Authority:

§§ 342-6, 342-32(1), Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 19, 20, 21, 22, Public Health Regulations, Chapter 37.

c. Schedules of compliance.

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA. This includes authority to set interim compliance dates in permits

which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality.

State Statutory and Regulatory Authority:

§§ 342-1(5), 342-6, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 21, Public Health Regulations, Chapter 37.

3. Authority to Deny Permits in Certain Cases.

State law provides authority to insure that no permit will be issued in any case where:

- a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;
- c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the FWPCA; or
- d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the FWPCA.

State Statutory and Regulatory Authority:

§§ 342-3, 342-6, 342-33, Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 4, 15, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

The Director has broad powers to control and regulate water pollution. He is specifically given the power to adopt rules and regulations.

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years.

State Statutory and Regulatory Authority:

§ 342-6(c), Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 15, Public Health Regulations, Chapter 37.

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirements.

State law provides authority to:

a. Require any permit holder or industrial user of a publicly-owned treatment works to:

(1) Establish and maintain specified records;

(2) Make reports;

(3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);

(4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed); and

(5) Provide such other information as may reasonably be provided.

b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:

(1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;

(2) At reasonable times have access to and copy any records required to be maintained;

- (3) Inspect any monitoring equipment or method which is required; and
- (4) Have access to and sample any discharge of pollutants to State waters or to publicly-owned treatment works resulting from the activities or operations of the permittee or industrial user.

State Statutory and Regulatory Authority:

§§ 342-32, Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 26, 27, 28, 29, 30, 31, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

§ 342-10, Hawaii Revised Statutes, bestows broad powers of entry and inspection of any actual or suspected source of water pollution. This statutory provision is controlling. § 22(b), Public Health Regulations, Chapter 37, more specifically relates to conditions in permits and is in no way inconsistent with or contradictory to the broad powers delegated by § 342-10.

6. Authority to Require Notice of Introductions of Pollutants into Publicly-Owned Treatment Works.

State law provides authority to require in permits issued to publicly-owned treatment works conditions requiring the permittee to give notice to the State permitting agency of:

- a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;
- b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or

- c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.

State Statutory and Regulatory Authority:

§§ 342-3, 342-6, 342-32, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 22, Public Health Regulations, Chapter 37.

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

State law provides authority to insure that any industrial user of a publicly-owned treatment works will comply with FWPCA requirements concerning:

- a. User charges and recovery of construction costs pursuant to Section 204(b);
- b. Toxic pollutant effluent standards and pre-treatment standards pursuant to Section 307; and
- c. Inspection, monitoring and entry pursuant to Section 308.

State Statutory and Regulatory Authority

§§ 342-3, 342-6, 342-32, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 22 Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

The State can control the industrial user by controlling the permittee.

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

State law provides authority to comply with requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 (hereinafter "the Guidelines") to:

- a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

State Statutory and Regulatory Authority:

§§ 342-3, 342-6 and Chapter 91, Hawaii Revised Statutes, as amended by Act 118 (1973).

§§ 5, 6, 8, 9, 10, 11, 12, 13, 14, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

Most of the above requirements are satisfied by adopted rules and regulations which are substantially similar to the guidelines set forth by EPA.

9. Authority to Provide Public Access to Information.

State law provides authority to make information available to the public, consistent with the requirements of the FWPCA and the Guidelines, including the following:

- a. Except insofar as trade secrets would be disclosed, the following information is available to the public for inspection and copying:
 - (1) Any NPDES permit, permit application, or form;
 - (2) Any public comments, testimony or other documentation concerning a permit application; and
 - (3) Any information obtained pursuant to any monitoring, recording, reporting or sampling requirements or as a result of sampling or other investigatory activities of the State.

- b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

State Statutory and Regulatory Authority:

§§ 342-5, 342-10, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 12, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

What is confidential so as to require non-disclosure is more specifically defined in the Department's rules and regulations above cited.

10. Authority to Terminate or Modify Permits.

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

- a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

State Statutory and Regulatory Authority:

§ 342-6, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 16, Public Health Regulations, Chapter 37.

11. Authority to Abate Violations of Permits or the Permit Program.

State law provides authority to:

- a. Abate violations of:
 - (1) Requirements to obtain permits;
 - (2) Terms and conditions of issued permits;
 - (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly-owned treatment works); and
 - (4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling.
- b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:
 - (1) Injunctive relief, without the necessity of a prior revocation of the permit;
 - (2) Civil penalties;
 - (3) Criminal fines for willful and negligent violations; and
 - (4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;
- c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained.

State Statutory and Regulatory Authority:

§§ 342-8, 342-9, 342-11, 342-12, Hawaii Revised Statutes, as amended by Act 118 (1973).

§ 33, Public Health Regulations, Chapter 37.

Remarks of the Attorney General:

Chapter 37 is adopted pursuant to Chapter 342, Part I, Definitions and General Provisions, and Part III, Water Pollution.

The Director of Health has no authority to collect criminal fines nor could or should he have such authority. The acts described as 40 C.F.R. § 124.73 are criminal acts of fraud and deceit and could be in violation of our Penal Code Provisions. Such offenders could be prosecuted by a county prosecutor in a court of law.

12. State Board Membership.

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, will include, at the time of approval of the State permit program, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provisions contained in Section 304(h)(2) of the FWPCA.

State Statutory and Regulatory Authority:

§ 342-35, Hawaii Revised Statutes, as amended by Act 118 (1973).

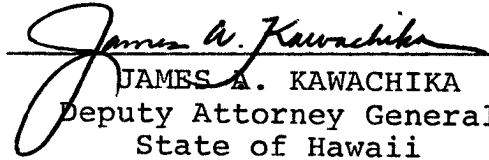
§ 32, Public Health Regulations, Chapter 37.

Under authorities in effect at the time of this Statement, no outstanding permits issued by this State for the discharge of pollutants are valid for the purposes of the National Pollutant Discharge Elimination System created under the FWPCA. All persons presently in possession of a valid State permit for the discharge of pollutants are required to:

1. Comply with the application requirements specified in subpart C of the Guidelines;
2. Comply with permit terms, conditions, and requirements specified in subparts E, F, and G of the Guidelines; and
3. If such persons are disposing of pollutants into wells, apply for and comply with a permit issued by the Department of Health, State of Hawaii.

Dated: March 27, 1974

Honolulu, Hawaii


JAMES A. KAWACHIKA
Deputy Attorney General
State of Hawaii